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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 104.

HENRY AMY, PLAINTIFF IN ERROR,

vs.

THE CITY OF DUBUQUE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED MARCH 29, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 104.

HENRY AMY, PLAINTIFF IN ERROR,

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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1,2 Pleas in the circuit court of the United States of America in and for the district of Iowa, at a term thereof begun and holden at the United States court room in the city of Des Moines and district aforesaid on the second Monday of October, the same being the eleventh day of October, A. D. 1875. Before the Hon. John F. Dillon, United States circuit judge for the eighth circuit, and Hon. James M. Love, United States district judge for said dist. of Iowa.

3 Be it remembered, that heretofore, to wit, on the 15th day of October, A. D. 1875, there was filed in the clerk's office of the circuit court of the United States in and for the district of Iowa a writ of error in a certain cause wherein Henry Amy was plaintiff and The City of Dubuque was defendant, which said writ of error is in the words and figures following, to wit:

4 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Henry Amy, plaintiff, and The City of Dubuque, defendant, a manifest error hath happened, to the great damage of the said Henry Amy, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison B. Waite, Chief Justice of the Supreme Court of the United States, the 15' day of Oct., A. D. 1875.

[SEAL.] GEORGE B. CORKHILL,
Clerk U. S. C. C., Dist. of Iowa.

5 In obedience to the foregoing writ of error, I, Edward R. Mason, clerk of the circuit court of the United States in and for the district of Iowa, do hereby certify and return that hereto annexed is a full, true, and complete copy of the record and proceedings and all things concerning the same in a certain cause in said court wherein Henry Amy was plaintiff and The City of Dubuque was defendant, as full, true, and complete as the originals of the same now remain on file and of record in my office.

I further certify that the original citation, with the return of service endorsed thereon, is hereto attached.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at my office in Des Moines, in said district, this the 8th day of February, 1876.

[SEAL.] EDWARD R. MASON,
Clerk U. S. Circ't Court, Dist. Iowa.

6 *Declaration.*

In the circuit court of the U. S. for the district of Iowa at Des Moines, May term, 1875.

HENRY AMY
vs.
THE CITY OF DUBUQUE.

The City of Dubuque was summoned to answer Henry Amy in a plea of debt, & thereupon the said Henry Amy, who avers that he is a citizen of the State of New York, complains of the said City of Dubuque, which he avers to be a municipal corporation created by, existing under the laws, & a citizen of the State of Iowa, & for cause thereof states that heretofore, to wit, on the first day of July, A. D. 1857, the said defendant at said circuit, by its certain writings obligatory, Nos. 47, 48, 49, 79, 80, 81, 82, 150, 151, 152, 159, 160, & 230, sealed with its corporate seal, signed by David S. Wilson, its mayor, attested by P. W. Crawford, its recorder, & registered by John Adam Kock, its auditor, bearing the said date & here shown to the court, promised to
7 pay Edward Langworthy, or bearer, the sum of five hundred dollars ($500) by each of said writings obligatory, payable on the first day of January, 1877, at the Metropolitan Bank in the city of New York, with interest on each of said sums from the said first day of July, 1857, at the rate of ten per cent. per annum, until said principal sums are paid in full, said interest payable semi-annually on the first day of July & January in each year from the date of said bonds on the presentation & surrender of the said bank of the coupons annexed to said bonds for said interest as they respectively became due by the terms thereof, for the faithful performance of which promise the said city faithfully pledged itself in accordance with the provisions of the code of Iowa and an act of the general assembly of the State of Iowa of January 28th, 1857; and said bonds recite that they were issued in accordance with said law and in pursuance with a special vote of the people of the said city of Dubuque, as provided by the charter of said city.

8 All of which is more particularly set forth in a copy of one of said bonds & coupons annexed hereto, marked "Exhibit A" & made a part hereof, all the others being like these except as to numbers and dates when said coupons became due.

That said bonds were issued in payment of a subscription to the capital stock of the Dubuque Western Railroad Company, which stock was received by the said city of Dubuque.

That for the interest on said bonds, coupons or interest-warrants were annexed to each of said bonds, payable to bearer as they severally become due.

That the plaintiff is the bearer of said bonds & coupons.

That several installments of interest have been paid on said bonds by the said defendant, & that on some of said instalments judgment has been recovered in this court, which said judgments now remain on the records of said court wholly unreversed.

That there is still due and unpaid on said bonds Nos. 150, 151, & 152 the instalments of interest of twenty-five dollars ($25) each, which fell
9 due on the first day of July, 1860. Also the instalment of twenty-five dollars ($25) each, which fell due on said bonds Nos. 150, 151, 152, & 159 on the first day of January, 1861.

Also the instalment of twenty-five dollars ($25) each, which fell due on said bonds Nos. 152, 159, & 230 on the first day of July, 1861. Also the instalment of twenty-five dollars ($25) each, which fell due on said bonds Nos. 152, 159, 160, & 230 on the first day of January, 1862.

Also the instalment of twenty-five dollars ($25) each, which fell due on the said bonds Nos. 152, 159, 160, & 230 on the first day of July, 1862.

Also the instalment of twenty-five dollars ($25) each, which fell due on said bonds Nos. 152, 159, 160, & 230 on the first day of January, 1863.

Also the instalment of twenty-five dollars ($25) each, which fell due on the first day of July, 1863, on said bonds Nos. 152, 159, 160, & 230.

Also the instalment of twenty-five dollars ($25) each, which fell due on said bonds Nos. 152, 159, 160, & 230 on the first day of January, 1864.

Also the instalment of interest of twenty-five dollars ($25) each, which fell due on said bonds Nos. 152, 159, 160, & 230 on the first day of July, 1864.

Also the instalment of twenty-five dollars ($25) each, which fell due on said bonds Nos. 152, 159, 160, & 230 on the first day of January, 1865.

The plaintiff further states that he is the bearer & holder of said bonds & coupons, and that said coupons are attached to said bonds.

All of which instalments the defendant has refused and still refuses to pay, though often requested so to do, by reason whereof the defendant has become liable to pay, and an action has accrued to the plaintiff to have & recover of the said defendant & said several instalments of interest, with interest on each of said instalments from the time they respectively fell due, together with the costs of this suit.

Wherefore he sues.

(S'g'd) HENRY AMY,
By GRANT & SMITH,
His Attorneys.

STATE OF IOWA,
Scott County, ss:

I, James Grant, being duly sworn, depose & say that I am one of the attorneys for the plaintiff in the above-entitled cause. That said suit is for the recovery of money only, and is upon written instruments in my possession & under my control.

That I know the contents of the foregoing petition & the facts therein stated are true as I verily believe.

(S'g'd) JAMES GRANT.

Sworn to & subscribed before me and in my presence, by James Grant, this 15th day of April, A. D. 1875.

[SEAL.] (S'g'd) W. M. KAEISER,
Notary Public in and for Scott County, Iowa.

No. 152.] [$300

UNITED STATES OF AMERICA.

STATE OF IOWA,
City of Dubuque:

Issued in pursuance of a special vote of the people of the city of Dubuque as provided by the city charter.

The City of Dubuque, in the State of Iowa, for & in consideration of five shares of one hundred dollars each, of the capital stock in the Dubuque Western Railroad Company, hereby promises to pay Edward Langworthy, of Dubuque, or bearer, the sum of five hundred dollars on the first day of January, 1877, at the Metropolitan Bank in the city of New York, together with interest thereon at the rate of ten per centum per annum payable semi-annually on each first day of July and January, on the presentation & surrender of the annexed coupons at the said bank as they shall respectively become due by the terms thereof.

For the faithful performance of which promise the said city is hereby pledged in accordance with the provisions of the code of Iowa, and an act of the general assembly of the State of Iowa of January 28th, 1857.

This obligation is one of a series of two hundred & fifty bonds of five hundred dollars each, respectively numbered from 126 to 375, inclusive, & one hundred and twenty-five bonds of one thousand dollars each, respectively numbered from one to 125, inclusive, amounting in all to two hundred & fifty thousand dollars, issued for the payment of two thousand five hundred shares of the capital stock of the Dubuque Western Railroad Company subscribed for by said city of Dubuque. It is further secured by a pledge of the five shares of one hundred dollars each in the capital stock of the Dubuque Western Railroad Company, which is placed in the hands of trustees duly authorized, who are empowered & required at the request of the holder of this bond at any time in case said city shall fail to perform any of the foregoing stipulations by neglecting to pay either principal or interest, or any part thereof, on this bond, when the same shall become due, to proceed & sell at public or private sale, the said five shares of stock or so much thereof as may be necessary to pay any portion of principal or interest due & unpaid.

In testimony whereof I, the mayor of said city, have hereto set my hand and caused the corporate seal of the city to be affixed to this bond & the same to be registered by the auditor & attested by the recorder the first day of July, 1857.

[SEAL.] (S'g'd) DAVID S. WILSON, *Mayor*.
" P. W. CRAWFORD, *Recorder*.
" JOHN ADAM KOCK, *Auditor*.

Registered book A, page 32.
(Across the face:) $500.

The City of Dubuque will pay to the holder hereof, at the Metropolitan Bank, in the city of New York, twenty-five dollars July 1st, 1865, being the interest then due on bond No. 152, in accordance with the tenor of said bond.

(S'g'd) E. SPOTSWOOD, *Treasurer*.
$25.

(Endorsed:) In cir. c't U. S. dist. of Iowa, 1999, Henry Amy vs. City of Dubuque. Declaration. Filed Apr. 16th, 1875. (S'g'd) George B. Corkhill, clerk. Grant & Smith, att'ys for pl'ff.

In U. S. cir. c't, dist. Iowa, May term, 1875.

HENRY AMY
vs.
THE CITY OF DUBUQUE.

Precipe.

The clerk will file the petition in the above-entitled cause & issue a summons in a plea of debt, twelve hundred & fifty dollars ($1,250).

Damages, twelve hundred & fifty dollars ($1,250), returnable
15 according to law & the rule of this court.

(S'g'd) GRANT & SMITH,
Att'ys for Pl'ff.

(Endorsed:) In U. S. cir. c't dist. of I'a, Henry Amy vs. The City of Dubuque. Filed Apr. 16th, 1875. (S'g'd) George B. Corkhill, clerk. Grant & Smith, att'ys for pl'ff.

16 UNITED STATES OF AMERICA,
District of Iowa:

To the Marshal of the District of Iowa:

In the name of the President of the United States you are hereby commanded to summon the City of Dubuque, a citizen of the State of Iowa, to appear before the honorable circuit court of the United States, in and for the district of Iowa, on the first day of the next term thereof, to be begun and holden at the city of Des Moines, on the second Monday of May next, it being the 10 day of May, A. D. 1875, then and there to answer unto Henry Amy, a citizen of the State of New York, in a plea of debt on promises to pay money in sum of twelve hundred and fifty dollars to the damage of said plaintiff in the sum of twelve hundred and fifty dollars.

Hereof fail not, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Des Moines, this the 16th day of April, A. D. 1875, and of the Independence of the United States the 99th.

[SEAL.] (S'g'd) GEORGE B. CORKHILL,
Clerk U. S. Circuit Court, District of Iowa.

17 (Endorsed on foregoing:) No. 1999. Summons. District court of the United States, district of Iowa. Henry Amy *vs.* City of Dubuque. Filed May 8th, 1875. Grant & Smith, att'ys for plaintiff; residence, Davenport.

This writ came into my hands for service on the 17th day of April-A. D. 1875, and I served the same on the within-named City of Du, buque April 19th, 1875, by reading the same to Hon. James Cushing, mayor of said city of Dubuque, and by delivering a true copy to him personally at Dubuque, in the county of Dubuque & State of Iowa.

(S'g'd) J. W. CHAPMAN,
U. S. Marshal,
By GEO. C. MABERLING,
Deputy.

Marshal's fees.

Mileage, 290 miles	$17 40
Service on one	2 00
Copy, one	50
	$19 90

18 Circuit court, May term, 1875.

UNITED STATES OF AMERICA,
District of Iowa, ss:

HENRY AMY
vs.
CITY OF DUBUQUE. } Demurrer.

And now comes the defendant and demurs to the petition of plaintiff, and for cause of demurrer states that said cause of action set up therein show' upon the face of said petition that they did not accrue within ten years last passed before the commencement of this suit, and that they are barred by the statute of limitations.

(S'g'd) FOUKE & LYON,
For Defendant.

(Endorsed:) Henry Amy vs. City of Dubuque. Demurrer. Filed May 14, 1875. (S'g'd) George B. Corkhill, clerk.

19 In circuit court United States, district of Iowa. October term, 1875. Tuesday, October 12th, 1875.

HENRY AMY
vs.
CITY OF DUBUQUE. } No. 1999. Law.

This cause came on this day for hearing on defendant's demurrer to plaintiff's petition, pl'ff appearing by Grant & Smith, and defendant by Fouke & Lyon, and the court, having heard argument of counsel thereon, takes same under advisement.

20 United States circuit court, district of Iowa. October term, 1875. Thursday, October 14th, 1875.

HENRY AMY
vs.
CITY OF DUBUQUE. } No. 1999. Law.

This cause having been heretofore submitted to the court on defendant's demurrer to plaintiff's petition, and the court being now sufficiently advised in the matter, orders that the demurrer be, and is hereby, sustained; and the said defendant electing to stand on his said demurrer, and refusing to further plead, it is ordered that judgment be entered thereon.

It is therefore considered, ordered, and adjudged that the plaintiff take nothing by his suit, and that the defendant go hence without day and recover from plaintiff his costs, taxed at $, and that execution issue therefor.

And the judges hearing said demurrer being divided in opinion thereon, it was ordered that this cause be certified to the Supreme Court of the United States upon such division of opinion.

21 Circuit court of the United States for the district of Iowa.

HENRY AMY
vs.
THE CITY OF DUBUQUE.

Be it remembered that on the 14' of October, 1875, this cause came on to be heard on the demurrer of the defendant to the petition of the plaintiff.

The action was upon certain bonds for instalments of interest
22 evidenced by coupons annexed, & which had never been severed from the bonds, as by the petition will appear, to which defendant demurred, & set up as cause of demurrer that the coupons had become due more than ten years before the action was commenced, and the demurrer was on the ground that the action was barred, though the coupons were not, and never had been, detached from the bonds.

The judges, Dillon & Love, were divided in opinion upon the question whether the coupons in suit were barred by the statute of limitation, and judgment was entered in favor of the demurrer, the circuit judge being of opinion that it was well taken, and final judgment was entered accordingly.

And on the above day, during the term, the point of disagreement was stated, under the direction of the judges, and the certificate thereof entered of record.

(S'g'd) JOHN F. DILLON.
(") J. M. LOVE.

(Endorsed:) 1999. Amy vs. City of Dubuque. Certificate of division of opinion. Filed Oct. 15, 1875. (S'g'd) George B. Corkhill, clerk.

23 Know all men by these presents we, Henry Amy, principal, and Whitaker M. Grant, hereby are held and firmly bound unto the City of Dubuque in the penal sum of one hundred dollars, to which payments we bind ourselves and each of us by these presents. Given under our hands this the 14th of October, 1875.

The condition of this obligation is this: Whereas the said Henry Amy has taken a writ of error to the Supreme Court of the United States from the judgment of the circuit court of the United States for the district of Iowa, in a certain cause then pending, wherein Henry Amy is plaintiff, and said City of Dubuque is defendant. Now, if said Amy shall duly prosecute his writ of error, and pay all costs & damages which shall be adjudged against, and obey and perform the orders of the Supreme Court in the premises, then this obligation shall be void; otherwise to remain in full force.

(S'g'd) HENRY AMY,
By J. GRANT, *Att'y.*
(S'g'd) WHITAKER M. GRANT.

This bond approved.

JOHN F. DILLON, *Judge.*

(Endorsed:) No. 1999. Amy vs. City of Dubuque. Writ of error. Filed Oct. 14th, 1875. George B. Corkhill, clerk.

24 To the City of Dubuque:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the city of Washington, on the second Monday in October, 1876, to answer to a writ of error pend-

ing in said court, in a cause wherein you are defendant in error, and Henry Amy is plaintiff in error, from the circuit court of the United States for the district of Iowa.

October 14, 1875.

JNO. F. DILLON,
Judge of the Circuit Court of the United States for the District of Iowa.

Service of the above citation is admitted this 15th day of October, A. D. 1875.

FOUKE & LYON,
For City of Dubuque.

(Indorsed:) No. 1999. Amy v. City of Dubuque. Citation. Filed Oct. 14th, 1875. George B. Corkhill, clerk.

25 In the Supreme Court of the United States. In error to the circuit court of the United States for the district of Iowa.

HENRY AMY, PLAINTIFF IN ERROR,
vs.
THE CITY OF DUBUQUE, DEFENDANT IN ERROR.

Now comes the said Henry Amy, by James Grant, his attorney, and assigns for error in the above entitled cause—

First. That the court erred in sustaining the defendant's demurrer to his petition.

Second. That the court erred in holding that as a matter of law the plaintiff was not entitled to recover as alleged in his petition.

Third. That the court erred in holding that the plaintiff was not entitled to judgment on his petition, and adjudging costs against him in said cause.

Wherefore, he prays that the judgment of the court may be reversed.

JAMES GRANT,
Attorney for Defendant.

(Indorsement on cover:) No. 104. Henry Amy, plaintiff in error, vs The City of Dubuque. Iowa Circuit court United States. Filed March 29, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 104.

OCTOBER TERM, 1878.

HENRY AMY, Plaintiff in Error,

vs.

THE CITY OF DUBUQUE, Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

ARGUMENT FOR PLAINTIFF IN ERROR BY ORION CLEMENS, BY PERMISSION.

FILED . 1878.

SUPREME COURT OF THE UNITED STATES.

No. 104.

OCTOBER TERM, 1878.

HENRY AMY,
Plaintiff in Error,
vs.
THE CITY OF DUBUQUE,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

Argument for Plaintiff in Error by Orion Clemens—by permission.

I am not an attorney in this case, but I am attorney for plaintiff in a case involving the same question, in the United States Circuit Court for the District of Iowa, which now stands continued, under the advice of said Court, until this case is disposed of by your Honorable Court.

As a decision of this case disposes of mine also, I have, at the suggestion of Messrs. Grant & Grant, attorneys for plaintiff in error, prepared an argument in this case, in behalf of the plaintiff in error, and ask leave of the Court to file the same herein.

STATEMENT OF THE CASE.

On the 16th day of April, A. D., 1875, Henry Amy commenced his action in the Circuit Court of the United States, for the District of Iowa, against defendant herein, on certain bonds issued by the city of Dubuque, dated

July 1, 1857, which bonds matured on January 1, 1877 [see printed record, p. 4], plaintiff claiming that there was due and unpaid on said bonds certain installments of interest, or coupons maturing respectively July 1, 1860—January 1, 1861, and each semi-annual installment subsequently maturing, including that which fell due on the first day of January, 1865. Plaintiff alleges that he is the bearer and holder of said bonds and coupons, and that said coupons are attached to said bonds [see printed record, pp. 2 and 3].

Defendant demurs, and for ground, states that said cause of action set up in plaintiff's petition did not accrue within ten years last passed, before the commencement of this suit, and that said coupons are barred by the statute of limitations [see printed record, p. 6].

This case comes to this Court upon a division of opinion on said demurrer.

ARGUMENT.

I think the question here presented was substantially settled by the cases of City of Kenosha vs. Lamson, 9 Wallace, 477, which was partly on attached and partly on detached coupons: City of Lexington vs. Butler, 14 Wallace, 282, which was wholly on attached coupons; and Clark vs. Iowa City, 20 Wallace, 583, which was wholly on detached coupons; and that the settlement of the question finally turned upon the point of separate ownership of the coupons and bonds.

The first of these cases was a suit upon the coupons alone, four of which were "annexed to a bond produced" [9 Wallace, 480], while as to the remaining one hundred and sixty-eight coupons that the plaintiff held, the bonds to which they had been originally annexed, "had been

sold and disposed of to bona fide purchasers, and had since passed from hand to hand in the stock market, like other negotiable securities, so that the plaintiff could not produce them to the Court." [9 Wallace, p. 480].

The Court alluded [9 Wallace, p. 482], to "the relation which the coupons originally held to the bonds; and which, in an *important sense* they *still* hold, though *distinct* as it respects *ownership*, as they represent the *interest* that had become due upon them. The relation we refer to is, that these coupons are not received or intended to have the effect of extinguishing the *interest* due on the bonds: · · · The coupons are given simply as a convenient mode of obtaining payment of the *interest* as it becomes due upon the bonds." That is to say, "in an important sense" *the relation of interest* borne by the coupons to the bonds is "still" held after negotiation, and that sense is "important" enough to enable the one hundred and sixty-eight detached coupons to bear to the bonds to which they had been originally annexed, the same relation of interest to principal that is borne by the four attached coupons to the bonds to which they are now annexed.

The Court then proceeds [p. 483–4] to argue—applying its argument to all the one hundred and seventy-two coupons before it, attached and detached alike—that "the coupon is *not* an independent instrument, like a promissory note for a sum of money, but is given for *interest* thereafter to become due upon the bond, which interest is *parcel of the bond*. · · · These coupons are substantially but copies from the body of the bond in respect to the *interest*, and · · · are *given to the holder of the bond* for the purpose, first, of enabling *him* to *collect the interest*, · · · and, second, to enable the holder [of

the bond—see restatement of this language in Clark vs. Iowa City, 20 Wallace, 587–8, where the word "him" is substituted for the words "the holder"] to *realize the interest* due or to become due, by negotiating the coupons. · · · The coupon is simply a mode agrecd on between the [original] parties for the convenience of the holder [of the bond] in collecting the *interest*. · · · · · Looking at their terms, and in connection with the bond, of which *they are a part*, · · · it would be a departure from the purpose for which they were issued, and from the intent of the [original] parties, to hold, when they are *cut off* from the bond for collection, that the nature and character of the security changes."

None of the coupons before the Court had been "cut off" without having been also transferred to parties other than the holders of the bonds, and therefore these extracts demonstrate that the Supreme Court meant to hold that the relation to the bonds of interest, was still held by the one hundred and sixty-eight negotiated coupons, equally with the four attached coupons.

That the words "in an important sense" meant so much, is further apparent in the second case, The City of Lexington vs. Butler, wherein the suit was upon bonds and coupons for the amount due on the coupons, as appears on page 285 of 14 Wallace, where it is stated in the "statement of the case," that the bonds "were sold in market overt, · · · and · · · J. C. Butler · · · became the owner of four of them. The coupons for a number of years being unpaid, he brought suit · · · · · · for the recovery of the amount of them"—and in the "first plea," on the same page, occur the words "the bonds sued upon." So that there was no "distinct" "ownership;" and nothing is said about any of the coupons having

been cut off, severed or detached. And yet the Court followed precisely the reasoning, and in a good degree the language, of City vs. Lamson, showing that the Court, up to that time, regarded the coupons as holding to the principal in the bonds the relation of interest, whether the suit were on coupons attached to a bond, or on coupons severed from the bonds and transferred to parties other than the holders of the bonds, or on bonds and coupons for the amount of the coupons.

An entirely new distinction was left to be drawn by the Court in Clark vs. Iowa City, in consequence of that case coming before the Court in an entirely new aspect, which resulted from the bond having been paid before the plaintiff sued on the coupons. This suggested the fact that if the coupons were still to be regarded as sustaining the relation of interest after "distinct" "ownership" had occurred, then there might exist the impossible anomaly of interest accruing during years in which there was no principal, or, as the Court expresses it [20 Wallace, p. 589], in pointing out the new relations which the coupons had assumed, in consequence of negotiation separately from the bonds, "they do not lose their validity if for any cause the bonds are cancelled or paid before maturity." The court was thus forced by the incontrovertible logic of events to subvert its own previous position as to the effect of separate negotiation on the relation of interest to principal. The Court had said [9 Wallace, p. 483], "the coupon is *not* an independent instrument, like a promissory note," speaking of the coupons before it, which were of both the attached and detached classes. The Court in Clark vs. Iowa City does not controvert this statement as to attached coupons, but tacitly admits its truth, so limited, by saying [20 Wallace, p. 589], substantially, that when "distinct" "ownership"

occurs, the coupons do *not* in an important sense, or with any other modification, or at all, still hold the relation of interest, but by severance from the bond and separate negotiation and delivery, "*become*" independent instruments like "separate bonds," intimating by the use of the word "become" an admission that coupons are not independent instruments before being detached and negotiated.

Precisely here is the point on which Clark vs. Iowa City takes issue with both those decisions, and establishes a conflicting theory, and though able to affirm the correctness of the results reached by those decisions under the peculiar laws and issues before the Court in those two earlier cases, the new and opposing theory of the Court would lead to conflicting results if contrasted with the previous theories in a practical application under a statute like that of Iowa.

The clause in Clark vs. Iowa City [20 Wallace, p. 589], in relation to drawing interest after maturity, I think is to be added to the negatives that precede it, notwithstanding the use of the word "and" instead of "nor," as attached coupons draw interest after maturity, as appears from the case of Cromwell vs. County of Sac, decided at the October term, 1877, of this Court.

While it is true that the Court in Clark vs. Iowa City was deciding merely the case before it, or, as the Court expressed it, whether the coupons "in suit" were barred, and that the accident of the bonds being paid before the coupons was not likely often to occur, yet, argumentatively, it was an extremely important fact, as bearing upon the question whether the coupon continues to represent interest after it passes to a holder different from the holder of the bond. In such a case the holder

of the bond has already realized principal and interest upon his investment, by selling the bond for the principal to the city, and the coupons for the interest to individuals. The city must pay these coupons, not as interest, for there might have been no principal during the corresponding years for which they profess to be interest on a certain principal, if that principal had been early annihilated by payment. These coupons are given for interest thereafter to accrue, in the expectation that the bond will be retained till maturity, and the interest collected from year to year on presentation of the coupons by the holder of the bond, in which case they would continue actually to represent interest. But if under some extraordinary pressure the principal should be paid the first month or year of its issue, it is manifest that no more interest could accrue on it, and yet coupons professing on their face to be interest on that principal, would continue to fall due and be paid by the city every six months for twenty years. But they could not be interest in fact, because there could be no such thing as money accumulating as interest on nothing. They would be paid simply because the city has promised in writing to pay the amounts they call for to bearer, and has authorized them to be put on the market and circulated, with the essential attributes of commercial paper. As payment of the principal in the bond may occur at any time after separate negotiation of the coupons, and because the holder of the coupon for interest has no control of the principal, the coupon must be regarded as driven into an independent condition the moment it passes into hands other than those holding the bond, especially as the purchaser of the bond may, if he choose, immediately upon its issue by the city, negotiate all the coupons, retaining the bond himself till its

maturity. It follows that the holder of separately negotiated coupons has no control in any case whatever over the principal, and can do nothing to prevent its passing out of existence. How then can he be said to receive interest on it? For want of this control, the moment coupons are separately negotiated they cease to hold the relation of interest to principal, and become in fact, though not in name, independent claims on the city for the amounts specified on their face; and though originally issued as embodiments of interest on a bond, and therefore appearing to be interest on their face, they have become, by negotiation, in legal effect separate bonds of the city for interest, just as the bond is a bond of the city for the principal. The city directly received the principal herself, for which she issued the bond, and having promised interest to the purchaser of the bond as a reward for the use of his money, his receipt of the interest without the city's paying it, transmutes the coupons, in legal effect, into separate bonds of the city for the interest, which interest she in legal effect received from the purchaser of the coupons, and paid over to the holder of the bond, who is the only person entitled to receive interest, because it is a rule of law that interest can only be paid to the holder of the principal. In the case of Florence vs. Drayson, 1 C. B. N. S., 584, copied in note *v* on page 397 vol. 2 of Parsons on Notes and Bills, the holder of the principal sold it, and then sued for the interest, and the Court decided against him, saying, "Interest could *only* be payable on the bill *to the holder of it*, as accessory to the principal." "It is *impossible* to separate the right to the interest from the bill to which the interest was accessory."

And the Supreme Court in Clark vs. Iowa City, p. 589, says that after negotiation and delivery sepa-

rately from the bond, the coupons "cease to be incidents of the bonds," and "are in legal effect equivalent to separate *bonds for the different installments of interest.*"

In City vs. Lamson, 9 Wallace, p. 485, the Court says: The declaration "recites, in very general terms, the bonds to which the several coupons in suit were annexed. Now, each coupon itself contains substantially on its face, all this information. It is *issued for interest* due at a certain day and place on a bond, giving its number and date. · · · · · The production of the coupon, therefore, at the trial, will show *the relation it bears to the bond*, and, if our opinion is sound, that *in this connection it cannot be legally severed from it till the interest is paid*, a count upon the coupon is all that can be material." Now a majority of the coupons before the Court *had* been legally severed from the bonds, and the interest had *not* been paid. What, then, did the Court mean? It meant what it said, that "*in this connection*" (the relation of interest) it cannot be severed from the bond, and as this immediately followed the conclusion of the Court that because of that relation the coupon was not barred by the statute of limitations, as the bond was not, the fair inference is that coupons cannot be severed from a bond by the statute of limitations, and will therefore only be barred when the bond is. This general principle was laid down for all the coupons before the Court, attached and detached. The Court in Clark vs. Iowa City took the position, in effect, that *negotiated* coupons could be severed from the bond by the statute of limitations, leaving it to be inferred by its silence, that its former position, to the extent that the statute of limitations could not sever coupons from the bond in the hands of the same holder, was correct.

The common form of a bond, like the form of a note, promises to pay the principal *with interest to the holder of the bond.* That this is the contract in the bond, is implied in the following language, used by the Supreme Court in Clark vs. Iowa City, pp. 587–8, which it restates approvingly from its own language in City v. Lamson, pp. 483–4, and as similar language is in City of Lexington vs. Butler, p. 297, all three cases agree that the bond extends its promise to pay interest no further than to the holder of the bond.

"The Court held that the coupons were substantially copies of the bond in respect to the interest, and were *given to the holder of the bond* for the purpose of enabling HIM to *collect* the interest at the time and place mentioned, *without the trouble of presenting the bond* every time the interest became due, and to enable HIM to *realize the interest* by negotiating the coupons in business transactions; and · · · · · it would be a departure from the purpose for which the coupons were issued, and from the intent of the parties, to hold that when they are *cut off* from the bonds the nature and character of the security changes."

To merely "cut off" the coupon does not change the nature and character of the security, as that would have to be done by the holder of the bond in receipting for his interest.

The promise of the city in the bond to pay interest to the holder of the bond, may be met in either of two ways:

1. He may present to the city treasurer a receipt [Commissioners of Knox county, Ind., vs. Aspinwall, et al., 21 Howard, 546] in the form of a coupon, and

"collect" his interest, to use the expression of the Supreme Court; or,

2. If this should not be convenient, or the city should not have the money, it authorizes the holder of the bond (by making that receipt payable to bearer) to "realize" his interest — to use the expression of the Supreme Court — by availing himself of the credit of the city to the extent of his claim for interest, by selling this receipt, which is in the form of a check on the city treasurer for the interest, and is called a coupon.

In either case the city has complied with its promise in the bond, that the person who invested his money in the purchase of the bond should receive interest thereon, and there is no more interest to pay, but if the city has not taken up the coupons, it will have to meet them, because it authorized the holder of the bond to draw checks on the city of Dubuque for his interest, or, what is the same thing, authorized him to sell her treasurer's checks on the city for his interest [see printed record, p. 4], and those checks are circulating as commercial paper.

The following form shows that the coupon, if presented to the city by the holder of the bond, or whenever taken up, becomes a receipt for the city, but when sold by the holder of the bond is a check on the city for the interest due to the holder of a specified bond:

"The City of Dubuque will pay to the holder hereof, at the Metropolitan Bank, in the city of New York, twenty-five dollars July 1st, 1865, being the interest then due on bond No. 152, in accordance with the tenor of said bond. E. Spotswood, Treasurer." [See printed record, p. 4.

That "interest due on bond No. 152" is due only to the holder of that bond, appears on the face of the bond itself. The bond says:

"The City of Dubuque · · · · · · *hereby promises to pay* · · · · *bearer* the sum of *five hundred dollars* · · · TOGETHER WITH *interest* · · · · · on the presentation and surrender of the annexed coupons" · · · · · · · · [See printed record, p. 4].

As the city owed nobody interest but the holder of the bond, when he "realizes" his interest by selling the coupon, the debt of the city for interest is paid, and there is substituted an outstanding check equivalent in legal effect to a separate bond of the city for a sum borrowed of the purchaser of the coupon to pay interest to the holder of the bond.

For these reasons, the coupon represents interest while it remains in the hands of the holder of the bond; but ceases to represent iuterest after it passes into the hands of one not the holder of the bond.

When the coupon represents interest it cannot be barred till the bond is. When it ceases to represent interest it will be barred from its own maturity. Parsons on Notes and Bills, vol. 2, p. 642, note *e*, says: *Interest is not barred till the principal is*, and hence the various installments of interest continue good until the statute period after the maturity of the note."—Citing Grafton Bank v. Doe, 19 Vt., 463.

This decision draws a proper distinction between installments of interest and installments of principal, because installments of principal are contracts to pay separate amounts of money at separate times, neither one of which is any part of any other, while interest is

part of one sum of money constituting the debt at any given point of time, the total of which is made up partly of principal and partly of interest due, and you cannot bar part of the debt before you bar the whole debt. To use the language in both City vs. Lamson, p. 483, and City of Lexington vs. Butler, p. 297, the interest is "*parcel of the bond.*" And in City vs. Lamson [p. 484], the Court uses the language, concerning the coupons, "in connection with the bond, *of which they are a part.*" Parsons on Notes and Bills, vol. 2, p. 394, says: "Interest is to be considered as a part of the debt, where it is expressed; for in such case it enters into the understanding of the parties, and it is declared by them to be a part of their bargain;" and on page 375 the same authority says: "Interest, if expressly promised to be paid, is as much a part of the debt as the principal." Citing Fake vs. Eddy, 15 Wend., 76.

In City vs. Lamson the Court had before it both classes of bonds. Four were attached to a bond produced, and one hundred and sixty-eight were detached and their owner was not the bearer of the bond. In discussing the question whether or not the coupons were barred the court treated the question throughout as depending on the point whether or not the coupons represented interest. The argument of the Court is devoted to maintaining the view that the contract in the bond to pay interest has not been changed by the repetition of the contract in the coupons; that it still remains *that* contract; it does not become two contracts; in the words of the Court, "There was but *one* contract, and that *evidenced by the bond*, which covenanted to pay the bearer [of the bond, of course,] five hundred dollars in twenty years, with semi-annual interest at the rate of

ten per cent. per annum. The bearer [of the bond] has the same security for the interest that *he* has for the principal. The coupon is simply a mode agreed on between the parties [the city and the purchaser from the city] for the convenience of the holder [of the bond] in collecting the interest as it becomes due."

This language, applied to all coupons, whether negotiated or not, merges the coupon, as interest, in the bond, in a similar manner to that in which Justice Miller, in the case of Durant vs. Iowa County, 1 Woolworth's Circuit Court Reports, p. 69, merges the interest in the bond at the time of the issue of the bond. In that case, if the principal only was considered the debt, the county had not exceeded the constitutional limitation. If the interest was considered part of the debt the county had exceeded the constitutional limitation. There was the promise of the county to pay a certain sum as principal at a future time. There was the promise of the county to pay certain sums as interest at future times. The Court decided that the county had not exceeded the constitutional limit, because the coupons when the bonds were issued, were not part of the debt within the meaning of the section, and saying, "The coupons attached to the bonds were promises to pay the annual installments of *interest.* Their *form* and the fact that they *might* be detached from the principal obligation, do not change their character. They do not form part of the debt, any more than would a provision for interest yet to accrue, *incorporated in the body of the bond.*"

And in City vs. Lamson, and City of Lexington vs. Butler, as *interpreted and approved* in Clark vs. Iowa City, 20 Wallace, page 587, the Supreme Court so far held the coupons to be as much interest as if "incorpo-

rated in the body of the bond," as in substance to hold that in legal effect they received the impression of the seal when it was put on the bonds, just as in legal effect the whole bond receives in every part the impression of a seal made on one corner, as the Court decided substantially in all three cases, that the placing of a seal on the *bonds*, made the *coupons* equivalent to sealed instruments, because, as alleged in all the three cases, the coupons were given for *interest*, and the first two cases said that this interest was "*parcel of the bond.*" The word "parcel" has a technical meaning, and is defined in that light by Webster, to be—"3. *A part belonging to a whole; as, in law, one piece of ground is part and parcel of a greater piece.*"

The statement in the first two cases, that the coupons are given for interest, "*which interest is parcel of the bond,*" appears in Clark vs. Iowa City shorn of this italicized clause, though without comment on the omission, because, perhaps, although the court holds that the coupons received the character of sealed instruments while attached to the bond, and did not lose it afterward, they did lose the character of interest, and did cease to be "parcel of the bond" when cut off and "transferred to parties other than the holders of the bonds," so that the position of the Supreme Court in City vs. Lamson was correct as to part of the bonds before it, and incorrect as to the balance, on that point, and therefore on that point it could be neither overruled nor sustained, while as to the coupons before it in City of Lexington vs. Butler, the statement would be correct, but if applied to the coupons before the court in Clark vs. Iowa City, would be incorrect.

Thus the Court in City vs. Lamson bases its decision

that the coupons were not barred, on the ground that they bore the same intimate, interlaced relation to the bond that interest does to principal, when the interest is incorporated in the body of the principal, and hence the coupons could not be barred in six years, because the bonds would not be barred in six years; or, as the Court expressed it [p. 485], "*not*" "*short* of twenty years," the issue made by the attorneys being whether they were barred in six years.

Following this decision, and on the same grounds, the City of Lexington vs. Butler decides substantially that the coupons could not be barred in five years, because the bond would not be barred in five years, which decided the question before the Court.

And the Supreme Court in Clark vs. Iowa City endorses the results reached, and inferentially endorses the reasoning as to coupons *until* they are "transferred to parties other than the holders of the bonds."

But the Supreme Court in City vs. Lamson made no distinction between attached and detached coupons. It put all the coupons before it, attached and detached, upon the same footing. It said [p. 482] that there was no difference in the "important sense" of "the relation" of "interest" to principal; that after coupons were detached and had passed into the hands of holders different from the holders of the bonds [as had one hundred and sixty-eight of those before the Court—p. 480], they still maintained that relation of interest to principal, and were still "not" "independent" [p. 483]; and that the two classes of coupons differed only in what the Court appeared parenthetically to regard at that time as an unimportant difference, that of "distinct" "ownership" [p. 482].

In City vs. Lamson the Court seems to have thought that, though the holder of the bond "*realized*" his interest when he sold a coupon, yet the city *did not then pay* the interest, and the coupon remained an outstanding demand for interest, *the duty of collecting it devolving upon the purchaser of the coupon* [9 Wallace, pp. 483–4].

In Clark vs. Iowa City the Court appears to have thought that at the same time the holder of the bond "realized" his interest, the city *paid* the interest, not with cash, as when the holder of the bond collects from the city directly, but with the city's "bonds for the different installments of interest," by which the city became legally responsible to the person who advanced the money to pay the interest to the holder of the bond. The Court says, 20 Wallace, p. 587, restating, with approval, that portion of the opinion in City vs. Lamson, "The Court held that the coupons were substantially copies of the bond in respect to the interest, and were given to the holder of the bond for the purpose of enabling him to collect the interest at the time and place mentioned, without the trouble of presenting the bond every time the interest became due, and to enable him to realize the interest by negotiating the coupons in business transactions," and here the Court, in Clark vs. Iowa City, changes the words used in 9 Wallace, pp. 483–4, which were as follows, those italicized being omitted in Clark vs. Iowa City:—"by negotiating the coupons *to the bearer* in business transactions, *on whom the duty of collecting them devolves*," and substitutes the words in 20 Wallace, p. 589—"Coupons, when severed from the bonds to which they were originally attached, are in legal effect equivalent to separate *bonds* [of the city, of course], *for the different installments of interest.*"

The idea that the holder of the bond receives his interest as well when he sells a coupon as when he uses it in collecting directly from the city, appears also in Lexington vs. Butler, 14 Wallace, p. 297, where the Court speaks as if *both* these methods of obtaining the interest were devised for the convenience of *saving the holder from the trouble of presenting the bond* every time he wanted to collect interest, leaving the subsequent independent circulation of the coupon to result as a mere offshoot of the device originally adopted for the mutual convenience of the original parties.

In Clark vs. Iowa City the question of "distinct" "ownership," which in City vs. Lamson the Supreme Court had considered of little importance, it now makes the pivotal point of its decision. It does not overrule the decision in City vs. Lamson, or in City of Lexington vs. Butler, but, as stated in the syllabus and borne out in the text, comments upon and explains them, leaving them to be good authority except as to the ground covered by the explanation, and that ground is carefully defined and limited. The explanation was rendered necessary by the change in the views held by the Court concerning the effect of separate ownership of bonds and coupons. While the Court in one or two instances does not add words explaining what it means by severing and detaching, it does so often enough to show that it all the time contemplates distinct ownership. The act of severing or detaching by the holder of the bond for the purpose of presenting the coupon to the city for payment and to be filed as a receipt, does not make any change in the relations of the parties, as it is as much a part of the original contract between the original parties as any other part of the contract.

The whole question in Clark vs. Iowa City is resolved into a question of ownership.

In the syllabus it is said: "The statute of limitations of Iowa . . . . . commences to run against actions upon coupons for interest annexed to municipal bonds in that State when they have been detached from the bonds and *transferred to parties other than the holders of the bonds*, from the maturity of the coupons respectively."

The "statement of the case" [p. 584], shows that the promise in the bond to pay interest was as usual a promise to pay interest to the holder of the bond alone, as it says, "Iowa City issued a number of bonds . . . . promising in each *to pay to the bearer* [of the bond] . . $500 *with interest*," and that when Clark sued on the coupons he was *not the owner or holder of any of the bonds.*

The attorneys understood the question of ownership to be involved, for the defendant, after pleading the statute of limitations, gave as his reasons therefor [p. 585], that the plaintiff got the coupons "*by purchase in the market* AFTER they had been severed from the bonds; that long before the suit brought the bonds had been satisfied, and that *the plaintiff was not owner of them* when they were so paid."

To this plea the plaintiff demurred, assigning among other causes "that the payment of the bonds *to another person than the holder of the coupons* did not bar his remedy on the coupon."

In the introductory statement [p. 586] the Court says: "The bonds of Iowa City were taken up and cancelled before the commencement of this action, but previous to such cancellation the coupons for interest due on the 1st

of January, 1860, upon which the action is brought, were detached and *negotiated to other parties* until by purchase they came to the possession of the plaintiff."

The Court then sets out the substance of the Iowa statute of limitations, so far as applicable, and carefully and distinctly alleges the question before the Court to be one of distinct ownership, by saying, "*The simple question, therefore, presented for our determination*, is whether the statute is a bar to an action upon the coupons detached from the bonds and *transferred to parties other than the holders of the bonds*," &c.

And on pages 588, 589, the Court says: "It was not the intention of the Court to decide that an action upon a coupon detached from the bond *and negotiated to other parties* was not subject to the same limitations as an action upon the bond itself. . . . . These coupons, when severed from the bonds, are negotiable and *pass by delivery*. They THEN *cease to be incidents of the bonds, and* BECOME in fact independent claims; . . . . . are in legal effect equivalent to separate bonds for the different installments of interest. . . . . and to each action—to that upon the bond and to each of those upon the coupons—the same limitation must upon principle apply." The Court then adds that the statute of limitation should begin to run on "*detached* coupons" when the right of action is complete, and concludes that the statute "began to run against the coupons *in suit* from their respective maturities," and the coupons "in suit" were explained by the Court itself in the outset to be "coupons detached from the bonds and TRANSFERRED to parties OTHER *than the holders of the bonds.*"

In the last sentence of the first paragraph on page 589 the Court, while saying the same limitations should

be applied to the coupons as to the bonds, does not say, generally, that similar limitations should be applied to actions *upon coupons* after their maturity, but upon *the* coupons, presumably referring to the coupons just described in the same paragraph as negotiated and passed by delivery, and whose characteristics had been set forth in sentences immediately preceding, and with which this sentence is connected by the word "therefore."

In this same paragraph the Court had glanced at the nature of the original contract and the expectation of both the city and the purchaser of the bond that he would get his interest as fast as it matures, and had then described the effect of the introduction of new parties to the contract by the holder of the bond selling his coupons. What are the facts? The contract was originally to *pay to A* so much principal *with interest.* That is one contract with one person. Suppose A sells each of forty coupons to a different person. What is the contract of the city now? The Court says the holder of the bond realizes his interest when he sells the coupons. Therefore the contract of the city to pay him interest is performed, and the city is now to pay to A, the holder of the bond, his principal alone, and to pay besides to B, C, D, &c., the city's obligations on which the holder of the bond realized his interest. What was before one contract to pay one person principal with interest, is now forty-one contracts to pay forty-one persons separate sums of money, each of the forty-one persons holding a claim independently of the claims of all the other forty. So the Court says [Clark vs. Iowa City, 20 Wallace, p. 589]: "Coupons for the different installments of interest are usually attached to these bonds, in the expectation that they will be paid as they mature, however distant the period fixed for the payment

of the principal. These coupons, when severed from the bonds, are negotiable and pass by delivery. They then cease to be incidents of the bonds, and become in fact independent claims; . . . . . are in legal effect equivalent to separate bonds for the different installments of interest."

That is to say, the city has in legal effect issued "separate bonds" to pay the purchaser of the coupons the installments of interest he paid for the city to the holder of the bond, just as it issued a bond to pay the purchaser of the bond the principal he paid to enable the city to meet some other obligation. The Court then says of these "separate bonds for the different installments of interest" [p. 589]:

"The like action may be brought upon each of them, when they respectively become due, as upon the bond itself when the principal matures; and to each action—to that upon the bond and to each of those upon the coupons—the same limitation must upon principle apply. All statutes of limitation begin to run when the right of action is complete, and it would be exceptional and illogical to hold that the statute sleeps with respect to claims upon *detached* coupons, whilst a complete right of action upon such claims exists in the holder."

Having established the position that the transferrence of coupons to holders other than the holders of the bonds rendered them equivalent in legal effect to separate bonds for the interest, as regular bonds are separate bonds for the principal, and the like action can be brought on both classes of obligations, whether either of the other class has been paid or not, it follows they should be treated alike as to the *time* of commencement of the running of the statute, and the Court therefore applies to both classes of obligations the recognized rule that

statutes of limitation begin to run when the right of action is complete. It is the same as if the Court had said, the like action may be brought on all bonds; coupons severed from bonds in respect to ownership, are equivalent to bonds; therefore the like action may be brought on such coupons. The Court having settled the principle that the statute will run against such detached coupons independently of the bonds, then fixes the time when the statute *begins* to run, by applying the ordinary rule, carefully avoiding any intimation of an intention to extend it to coupons in the condition of installments of interest, against which, as such, the statute *never begins* to run at all, though when interest is payable in installments an action lies for the interest before the principal is payable.—Greenleaf vs. Kellogg, 2 Mass., 568; Tucker vs. Randall, 2 Mass., 284; Fake vs. Eddy, 15 Wend., 76; Parsons on Notes and Bills, p. 463; Bouvier's Law Dictionary.

Yet, though suits may thus be brought on installments of interest as they mature, the statute does not run on them till it runs on the principal; and therefore so long as coupons continue to represent installments of interest the fact that suit can be brought on coupons, attached or detached, before the bond is due, can only bar them sooner than the principal when they have lost the character of interest by being "transferred to parties other than the holders of the bonds," and have thus "become in fact independent claims," "equivalent to separate bonds," which shows that the Court was merely fixing the time when the statute begins to run in a case like that before the Court, where there was distinct ownership of the bonds and coupons.

ORION CLEMENS.

James Grant

SUPREME COURT OF THE UNITED STATES.

No. 104.

OCTOBER TERM, 1878.

HENRY AMY, PLAINTIFF IN ERROR,

vs.

THE CITY OF DUBUQUE, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF IOWA.

ARGUMENT FOR PLAINTIFF IN ERROR BY GRANT & GRANT AND H. LACEY.

FILED , 1878.

SUPREME COURT OF THE UNITED STATES.

No. 104.

OCTOBER TERM, 1878.

HENRY AMY,
Plaintiff in Error,
vs.
THE CITY OF DUBUQUE,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

Argument for Plaintiff in Error by Grant & Grant and H. Lacey.

STATEMENT OF THE CASE.

On the 16th day of April, A. D., 1875, Henry Amy commenced his action in the Circuit Court of the United States, for the District of Iowa, against defendant herein, on certain bonds issued by the city of Dubuque, dated July 1, 185[illegible], which bonds matured on January 1, 187[illegible], (see printed record p. 4,) plaintiff claiming that there was due and unpaid on said bonds certain installments of interest, or coupons maturing respectively July 1, 1860—January 1, 1861, and each semi-annual installment subsequently maturing, including that which fell due on the first day of January, 1865 Plaintiff alleges that he is the bearer and holder of said bonds and coupons, and that said *coupons* are *attached to said bonds*, (see printed record pp. 2 and 3.)

Defendant demurs, and for ground, states that said cause of action set up in plaintiff's petition, did not accrue within ten years last passed, before the commencement of this suit, and that said coupons are barred by the statutes of limitations, (see printed record p. 6.)

This case comes to this Court upon a division of opinion, on said demurrer.

ARGUMENT.

A consideration of this cause involves but a single point, to wit: Whether the statute of limitations of Iowa applies to bar an *action upon bonds* ~~past due~~ having *coupons* or *interest warrants attached* thereto overdue more than ten years prior to the date of the commencement of the action, to prevent the recovery of the amount due on bonds, evidenced by such coupons. This proceeding as to the facts is materially different from those of

> The City of Kenosha *vs.* Lamboon, 9 Wallace, 477.
> The City of Lexington *vs.* Butler, 14 Wallace, 282, and
> Clark *vs.* Iowa City, 20 Wallace, 583.

And although very similar in some respects, and suggesting the case at point, this Court has studiously avoided an *obiter dictum*, covering the facts set forth in plaintiff's petition.

The facts as they appear in The City *vs.* Lampson, are as follows, to wit: One Lampson having *coupons* for the interest due on certain bonds, which coupons were unpaid, brought suit against the city to recover amount due on said coupons. The declaration recites in very general terms the several bonds to which the coupons that the plaintiff held *had been* originally annexed, setting forth that these bonds, themselves, had been sold and disposed of, to *bona fide* purchasers, and had since passed from hand to hand in the stock market, so that plaintiff could not produce them in Court; that the interest had accrued on the same; that the city had neglected to pay at time and place designated; and that the bonds and coupons were owned by plaintiff. *The declaration was upon the coupons*—(20 Wallace p. 480.)

This action rose in Wisconsin, where actions upon sealed instruments are not barred until the lapse of twenty years; whereas actions upon simple contracts are barred in six years. The action was upon coupons over due more than six years, but less than twenty years. The defendant pleaded the statute of limitations, that the said several causes of action had not accrued to the plaintiff within six years from the commencement of the suit.

Mr. Justice Nelson delivering the opinion of the Court, says: "We agree that if *this* were an action upon the *bonds* to recover

installments of interest that had accrued thereon, *although such installments had been duly assigned to the plaintiff*, there would be great difficulty in maintaining it in his name, as well as without producing the bonds, as the proper evidence that interest was due. The plaintiff under such circumstances, doubtless would have a remedy for withholding the interest, but it is not necessary or material to stop and point it out in the present case, for we do not regard the action as founded upon the *bonds* but upon the *coupons*. There is no extinguishment of interest until payment, p. 482. The action then being founded upon the *coupons* the material question arising on this branch of the case is whether or not the plea of the statute of limitations constitutes a good defence, &c."

"The *coupon* is *not* an *independent instrument*, like a promissory note for a sum of money, but is given for interest thereafter to become due upon the *bond*, which *interest is a parcel of the bond*, and partakes of its nature, and the bond being of a higher security than a simple contract debt, is not barred by lapse of time short of twenty years, p. 483. There is nothing in the contract between the parties that would lead to the conclusion, the nature or character of the security by the bond for the interest was to be changed or lessened by the issue of the coupons, but the contrary. *There was but* ONE *contract*, and that evidenced by the bond which covenanted to pay the bearer five hundred dollars in twenty years, with semi-annual interest."

The point established in this case touching upon the limitation of *actions upon coupons detached from the bond* is simply that the lapse of time after their maturity necessary to bar an action upon such coupons must be the same as that to bar an action upon the bond from the date of its maturity.

The same principle is maintained in The City of Lexington *vs.* Butler, 14 Wallace.

In Clark *vs.* Iowa City, the action was upon the coupons. It appears that the bonds of Iowa City were taken up and cancelled before the commencement of the action, but previous to such cancellation the *coupons* for interest upon which the action was brought, were *negotiated* to other parties, until by purchase

they came to the possession of the plaintiff. The coupons were overdue more than ten years. The statute of Iowa prescribes the limitation of ten years to actions on all *written* contracts' whether under seal or otherwise.

The only question therefore presented to the Court was whether the statute was a bar to *an action upon the coupons* DETACHED from the bonds and transferred to parties other than the holders of the bonds, when it would *not* be a bar to an action on the bonds themselves had they not been cancelled.

Mr. Justice Field after reviewing the cases of The City *vs.* Lampson, and The City of Lexington *vs.* Butler, *supra*, proceeds to say, (20 Wallace, p. 589,) "*coupons* when *severed* from bonds are negotiable and pass by delivery. They *then* cease to be *incidents* of the *bonds*, and become in fact *independent claims*. They *then* possess the essential attributes of commercial paper. Citing

Thompson *vs.* Lee County, 3 Wallace, 327.
Aurora City *vs.* West, 7 Wallace, 105.
County of Beaver *vs.* Armstrong, 44 Penn. St., 63, and
Nat'l Ex. Bank *vs.* H. P. & F. R. R. Co. 8 R. I., 375

Coupons when *severed* from the bonds to which they were originally attached, are in legal effect equivalent to separate bonds for the different installments of interest. The like action may be brought upon each of them, when they respectively become due, as upon the bond itself when the principal matures. All statutes of limitation begin to run when the right of action is complete, and it would be exceptional and illogical to hold that the statute ceases with respect to claims upon *detached coupons*, whilst a complete right of action exists in the holder."

The Court says in conclusion: "We answer therefore the question certified to us, that the statutes of Iowa, which extends the same limitations to actions on all written contracts sealed or unsealed, began to run against *the coupons in suit* from their respective maturities."

The principle contained in Clark *vs.* Iowa City, that a coupon once *detached and negotiated*, ceases to be a mere *incident* of the bond and becomes an *independent claim*, was laid down in National Exchange Bank *vs.* Hartford, Providence and Fishkill R. R. Co., 8 R. I., p. 381 in 1866.

These principles, from the preceding cases referred to, seem clearly to establish,

1. That the statute of limitations in any state does not bar an action, upon a coupon for interest, in a period shorter than is necessary to bar the principal debt, computing from their respective maturities.

2. That the statute commences to run against coupons for interest. when *severed* from the principal to which they belong, and when negotiated to third parties, from the dates of their respective maturities.

3. That a *separation* of the *coupon* from the *bond* or *note* by actual *negotiation* makes it a *separate* and *independent* instrument and makes it amenable to all the rules and regulations of commercial paper.

An equally plainly rule has been established by Courts of nearly every State in the Union as well as the tribunal to which this case is referred, that a suit may be instituted upon the bonds for any installments of interest maturing, if not paid.

This Court, however, has not until recently given its opinion as to whether or not holders of coupons for interest have not the right to elect and bring their action upon the covenants contained within the bonds, where they are of the character of those in this suit, or declare upon the coupon itself.

Bouvier defines coupons to be "those parts of a commercial instrument which are to be cut, and which are evidence of *something connected with the contract mentioned in the instrument.*"

This accords with the definition, as set forth in the decisions of this Court. But this Court has under certain circumstances, (when severed and negotiated) changed their character from mere *incidents* to the principal, to that of *separate, independent negotiable instruments, having distinct attributes of their own, equal in every respect to the principal from which they emanated.*

For the sake of convenience, in collecting interest represented in this form, or for the purpose of utilizing their value in commercial transactions, the rule which enables the holders of

coupons to change their character in this manner, is a very salutary one.

The holder of a note made payable to himself or order, may change its nature to some extent by blank indorsement, thereby making it payable to any other person who is bearer, or to any number of persons who may hold it jointly, so the same instrument may be changed back to its original condition as regards its negotiability by a subsequent endorsement to order.

That coupons, which have at no time been *severed* or *separated* from the bonds or notes to which they are attached, are not *incidents* of such instruments, but are while thus attached, possessed of t he independent attributes of negotiable paper, we do not think can be confirmed by any adjudicated case in the Courts. That they remain as such incidents at the will of the holder until detached is the logical conclusion which naturally follows,—and the following cases confirm this theory.

In Grafton Bank *vs.* Doe *et al.*, 19 Vermont, 463, the rule is declared as follows: "That statutes of limitations do not begin to run upon a demand until the principal or at least some separate and distinct portion of the principal becomes due and payable, and then only upon such distinct and separate portion.

The interest accruing from year to year is not thus separated from the principal demand, and consequently the statute of limitations does not run upon it until the principal is barred by the statute."

In Howe *vs.* Bradley, 19 Me., 36, it is held that interest is an accessory or incident to the principal. The principal is a fixed sum, the accessory is a constantly accruing one. The former is the basis or substance from which the latter arises and on which it rests. The holder in such cases may maintain a suit to recover the interest payable before the principal, but cannot have a separate action for it after the principal becomes due and while it remains unpaid, because he may recover it in the action for the principal.

Again, interest follows the principal as an incident to it so long as it remains an incident, but where it is separated and set apart from the principal by actual payment, or by being carried when due to the credit of the owner of the principal in his account with the debtor, and this in pursuance of a provision in the contract creating and defining the principal debt, it is so far separated and disjoined from the principal as to cease to be an incident to and does not follow it. Ohio City *vs.* Cleveland & Toledo R. R. Co., 6 Ohio St., 489.

If a note be payable in installments, the statute does not run on against the note unless the last installment falls due, or unless the note contains a provision that if the first installment be unpaid, the whole note shall be due; in which case it begins to run as soon as the first installment is unpaid.

Hemp *vs.* Garland, 4 Q. B., 519.
Irving *vs.* Veitch, 3 M. & W., 90.

The 3 & 4 Will. 4, Chap. 42, Sec. 3, which prescribes twenty years, constitutes a bar to an action on a writing obligatory, in those cases *only* where *every* breach of the condition has taken place more than twenty years previous to the commencement of the action. 15 M. & W. (Eng.) 48.

That interest is an incident to the principal. See also,

McConnell *vs.* Thomas, 3 Ill., 2 Scam., 313.
The City *vs.* Lampson, 9 Wallace, 483.
Clark *vs.* Iowa City, 20 Wallace. 589.

Interest is parcel of the bond and partakes of its nature.

City of Lexington *vs.* Butler, 14 Wallace, 297.

Whatever may be the force or bearing of the cases above cited we find that *this* Court decided the very point in issue in this suit at the October term, 1877, in Cromwell *vs.* County of Sac, not yet reported by Mr. Otto. The opinion of Mr. Justice Field will be found in *Central Law Journal*, Vol. 6, No. 16 p. 209. The Court held without a dissenting voice, 2d column p. 210. "The *interest* stipulated was a mere *incident* of the debt. The *holder* of the bond had his *option* to *insist upon its payment when due or*

to allow it to run until the maturity of the bond, that is, *until the principal was payable*. The action was upon the *bonds* not upon the *coupons*. The coupons were *attached* to the bonds, not *detached*.

See also, National Bank of North America vs Kirby, 108 Mass, 497.

These coupons in suit not having been clothed with the character of separate instruments by severance, still remain parts of the bonds and are not barred before the bonds themselves.

In conclusion, the various statutes of limitations are rigorous rules, the enactment of which public policy demanded. While it is the duty of the Courts to enforce them, they are not bound to give them that construction which will operate most prejudicially to those whose remedies and rights are to be forfeited by them, but rather in favor of the right which in all such cases is imperilled.

GRANT & GRANT, AND
H. LACEY.

SUPREME COURT OF THE UNITED STATES.

NO. 104.

OCTOBER TERM, 1878.

HENRY AMY, PLAINTIFF IN ERROR,

vs.

THE CITY OF DUBUQUE, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF IOWA.

ARGUMENT FOR DEFENDANT IN ERROR, BY H. T. McNULTY.

Filed , 1878.

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STATEMENT OF THE CASE.

On the 16th day of April, A. D. 1875, Henry Amy commenced his action in the Circuit Court of the United States in and for the District of Iowa, against defendant, the city of Dubuque, nominally upon certain bonds issued by said city, dated July 1, 1857, which bonds matured on the 1st of January, 1877, (printed record, p. 4,) but in fact upon certain coupons attached to said bonds, which coupons were then due and unpaid. That said coupons had matured respectively July 1, 1860, January 1, 1861, and each semi-annual installment of interest subsequently maturing, including that which fell due on January 1, 1865. Plaintiff alleges that he is the bearer and holder of said bonds and coupons, and that said coupons are attached to said bonds, (printed record, ps. 2 and 3).

Defendant demurs to said petition, and states as grounds thereof, that said cause of action set out in the petition of plaintiff did not accrue within ten years last passed before the commencement of this suit, and that said coupons are barred by the statute of limitations. (Printed record, p 6).

This cause comes up upon a division of opinion on said demurrer.

ARGUMENT.

This case presents but one point for determination, as stated by counsel for plaintiff in error, but to my mind it is a shade different from the form they give it. It is true, suit is nominally brought upon the bonds to recover the amount of the coupons over due, which are attached to the bonds, but whatever the form of the action may be as set out in the petition, the fact is, that it is a suit upon the coupons to recover the amount due thereon, and in no wise to recover upon the bonds proper nor any part of the principal debt which they represent, hence the court will examine and decide the case upon its fact condition, and not its formal. The only question presented by the demurrer is: Does the statute of limitations of Iowa begin to run against a coupon interest warrant from the date of its maturity, providing it remains attached to the original bond, or bond representing the principal debt? If it does, then the demurrer in this case should be sustained; if not, it should be overruled.

The Iowa statute of limitations is as follows:

CODE 1873, SECTION 2529.—"The following actions may be brought within the times herein limited respectively, after their causes accrue, and not afterwards, except when otherwise specially declared."

Subdivision 5, of said section, reads:

"Those founded on written contracts, on judgments of any courts except those courts provided for in the next section, and those brought for the recovery of real property within ten years."

This statute expressly provides that actions upon written contracts must be brought within the time herein limited, after their causes accrue, and not afterwards, to-wit, ten years.

It is not disputed in this case, but that the cause of action accrued at the maturity of the coupons respectively, and that suit might have been brought thereon by any person owning the same.

Under the laws of Iowa, the cause of action accrues (in a case like the one at bar) at the maturity of interest upon a promissory note or bond, when the interest is made payable at fixed periods, and suit may be brought

therefor, it being then considered in law an independent debt. Mann vs. Cross, 9 Iowa, 328.

In this case one of the questions was, as to whether, under the laws of Iowa, interest draws interest from the time the note provides the interest upon the principal, shall be paid, irrespective of the time when the principal in the note becomes due, and the court say:

"Was he (plaintiff) entitled to six per cent (interest) upon the interest annually due? We think he was.

The respondent was under a legal obligation to pay this interest at the end of the year; it was a sum of money then due without a contract fixing the rate of interest upon it, and for which he might have been sued. He was, therefore, bound to pay its legal value, which by our law, in the absence of written contract reserving more, is fixed at six cents on the hundred." (See cases cited).

Hershey vs. Hershey, 18 Iowa, 26, was an action for over due installments of interest upon a written agreement.

The point was made as to what the status of the interest was in an instrument which declared the interest payable at fixed periods before the maturity of the principal, and the court say:

"The payment of interest periodically is expressly stipulated for, and for a breach of this condition of the contract plaintiff may recover, just as clearly as for the non-payment of an installment of the principal.

By their agreement the parties have made this interest, when it matures, not simply an incident of the debt, but *pro tanto* the debt itself, and the plaintiff was not, therefore, bound to wait the expiration of the five years from the date of the award to recover the semi-annual installment of the interest," &c.

On page 29 the court further say: "The plaintiff sues at law for the interest precisely as if he had separate notes for the same, and as he might do in case of an ordinary bond."

In the case of Preston vs. Walker, 26 Iowa, 210, the court, commenting upon installments of interest over due, states: "That as the defendant was under a legal obligation to pay interest at the end of each year, it was a sum of money then due without a contract fixing the rate

of interest upon it, and for which he might have been sued, and that he was, therefore, bound to pay its legal value, or, in the language of the statute, it is 'money due by express contract,' or 'money due,' and as such the promisee is entitled to his interest from the time it is so due."

See Code of Iowa, 1873, Sec. 2077. Ankelet vs. Converse, 17 Ohio, 11.

The Supreme Court of Iowa, in passing upon the question of interest, makes a distinction between interest upon bonds, or notes, where the interest is made payable at stated times, and where the instrument merely provides that the principal shall draw interest at a rate fixed per annum; in the former, they hold that after maturity it becomes part of the debt upon which legal interest will thereafter accrue, (no contract being to the contrary), and upon which suit may be brought at once for its recovery, irrespective of the principal debt or its maturity.

In the latter, they hold that it never matures into a part of the debt, but always remains incident to the debt; to mature when the principal does, and to be collected with it. Aspinwall vs. Blake, 25 Iowa, 320, and authorities cited.

It is clear from the foregoing decisions that in this state the law is decided to be, that where the parties by agreement make the interest upon the principal debt payable at stated periods, after maturity, the interest becomes part of the debt and is an installment due, with all the legal rights and incidents attending it in the hands of the owner that are applicable to any other separate debt founded upon similar contracts, and if this be true, then it must be subject to all the disadvantages and defenses under the laws of Iowa, that other similar and like contracts and debts are, and the statute of limitations will run against it.

But this is not all. The Supreme Court of Iowa has determined when the statute of limitations begins to run under our law.

In the case of Baker vs. Johnson County, 33 Iowa, 151, the facts were in substance these: In 1861 Johnson County, by resolution, employed the plaintiff to procure proofs necessary to enable the county to recover certain swamp land money and land scrip from the general government, &c. The work was completed in 1861; in 1865 plaintiff

presented his bill to the county board for payment; in 1870 suit was instituted. The statute of limitations was interposed as a defense upon demurrer. The question raised was: When did the statute commence to run, from the time the work was completed in 1861, or from the time the claim was presented to the board?

The court held that the cause of action accrued when the work was completed in 1861, and that the presentation of the claim to the board of supervisors had nothing to do with that point, and that under our decisions the statute of limitations commences to run from the date when the cause of action arose or accrued.

Page 155 the court say: "The statute begins to run when the cause of action accrues, which in that case was when the work was completed in 1861."

In the case of Prescott vs. Gonsar, 34 Iowa, 180–1, the court holds the same doctrine, and say: "That after the cause of action had accrued to allow the party to suspend the operation of the statute of limitations by his own neglect, would be to permit him to take advantage of his own wrong."

In the case of Callanan vs. The County of Madison, 45 Iowa, 562, which was to recover back taxes that had been erroneously paid, the court announce:

"That the cause of action accrues at the very moment of payment of the taxes, if at that time the tax was erroneous or illegal. The right of the plaintiff and liability of the county do not depend upon the future acts to be done or suffered by either; their relation as creditor and debtor is fixed by the illegality of the tax."

See Brown & Sully vs. Painter, 44 Iowa, 369, and cases cited.

From these authorities we see that the Supreme Court of Iowa has settled the points in dispute in the case at bar, so far as the Iowa law is concerned, viz:

First. That where by agreement of parties interest is made payable at fixed certain times; that at its maturity it becomes part of the debt, is money due on contract, and stands as an over due installment with the right of action accrued thereon, irrespective of the principal debt or its maturity, and possesses all the legal rights and in-

cidents that pertain to other and similar or like separate debts, on like contracts.

Second. That the statute of limitations applies to all cases, and begins to run from the moment that the right of action is complete.

Now, the rule which governs this court in construing state statutes, is to follow the construction given to the statutes by the courts of that state, provided innocent parties have not acquired rights before such construction was given, which would be sacrificed by following the rule.

Under the Iowa decisions upon the matter of interest payable in installments, and the time when the statute begins to run, the coupons in the case before the court would be barred.

They were separate installments or obligations given for interest to become due, which obligations had been due with the right of action accrued thereon for more than ten years before the commencement of this suit, and in the language of the court in Prescott vs. Gonsar, Supra:

"To allow the party to suspend the operation of the statute of limitations at his will, would be to allow him to take advantage of his own wrong, in fact, would practically abolish the statute, and ruin the obligor or maker, because if the theory of counsel for plaintiff in error be correct, the statute would not begin to run against the coupon or coupons until it commenced to run against the principal bond, hence if the bond for the principal debt should run for fifty or a hundred years, or any other long period of time, the holder or owner of the bond could hold the over due coupons the same length of time, and for ten years thereafter, with their constantly accumulating and compounding interest, till they would reach a sum beyond any one's ability to pay, and this, too, in perfect independence and defiance of the obligor. Such is not and could not be the meaning of any statute of limitations enacted by rational beings."

Their theory is proper and applicable to the case of a bond or note which provides for a certain rate of interest per annum without fixing the time of payment, because then the interest does not bear interest, but is calculated as simple interest upon the debt, and becomes payable

with the debt; the understanding and agreement of the parties is thus clearly fixed, and no advantage can be taken by either: the parties agree that the interest shall not be paid or calculated till the principal debt is payable, except by consent. (Aspinwall vs. Blake, Supra.) But the understanding and agreement of the parties is different in a case like the one at bar; here the agreement is that the interest shall be payable semi-annually, without regard to the time when the principal debt becomes due, and this, too, by separate and distinct instruments from the original bond, and if not paid at maturity, that they shall draw interest till paid, with the right of action accrued upon them from the date of maturity.

Now in commenting upon this class of securities this court has said, in the case of The City of Lexington vs. Butler, 14 Wallace, 297: "That the coupons are so attached to the bond that they may be cut off by the holder as a matter of convenience in collecting the interest due, or to become due, by negotiating the same to bearer in business transactions, or presenting for collection without the trouble of presenting the bond every time an installment of interest falls due." This is the convenience so far as the holder is concerned, and was so intended by both parties; but this is not all, nor the only purpose and object of the coupons. It was further intended by the parties, and the very terms of the instrument so express, that when the installment becomes due that the maker should have the right to pay it, and thereby cancel so much of the debt, and the law implies that if the holder will not give the debtor the opportunity of so paying within the time of the statute of limitations from the maturity of the claim, that he shall not be permitted to take advantage of his own laches, or wrong, and claim his rights afterwards; in this light the contract is enforced justly and fairly between both parties, and the law given its full scope and meaning.

Coupons attached as interest warrants to bonds for the payment of money, when they are payable to order and endorsed in blank, or are payable to bearer, are transferable by delivery and are subject to the same rules and regulations so far as respects the title and rights of the holder, as negotiable bills of exchange and promissory

notes. City of Lexington vs. Butler, Supra. (296). If this be the commercial and natural status of coupons, then they, like other negotiable paper, are subject to the defense of the statute of limitations; but to avoid this logical and necessary consequence, counsel for plaintiff in error claim that while the coupons remain attached to the bond and held by the owner of the bond, that they do not possess the qualities and character above ascribed to them, but are and remain the same as interest upon a bond which only provides for a certain rate of interest per annum. If this be not the principle they contend for, in no other way can they make their claim tenable. Is this position maintainable? Certainly not. Even if there were no separate coupon warrants, and the interest were made payable annually by the express terms of the bond itself, under the laws of Iowa above referred to, the interest installments after maturity would become separate and distinct from the original debt as interest, and would become *pro tanto* part of the debt—would be an installment, or money due upon contract, which draws interest as a separate contract from maturity, and capable of being separately sued for and collected, and would be like all other over due claims upon like contracts subject to whatever defenses the debtor had to it after maturity and at the institution of the suit, the difference between interest thus provided for and coupons is that the latter is on a separate obligation from the original bond, and is negotiable, subject to all the rights, liabilities and incidents of other negotiable paper; while the former possesses no negotiable qualities separate from the original instruments, save what the statute of Iowa gives to all unnegotiable contracts and claims after transfer and notice to the debtor. Therefore, if the former claim for interest would be liable to the defense of the statute of limitations, much stronger is the right to its enforcement against the latter, viz: the coupons; and this must be the legal result if this court construes and applies the statute as the Supreme Court of Iowa has done.

Counsel for plaintiff in error seem to claim that the coupons are not negotiable, or possess the essentials of negotiability unless they have been detached from the original bond, and appear to rely upon the previous de-

cisions of this court for their anomalous proposition. Now this court has never held any such doctrine. In the case of The City vs. Lamson, the court merely said "that when the plea of the statute of limitations is interposed, the same period of time applies to the coupons that does to the bond."

In the case of the City of Lexington vs. Butler, 14 Wallace, 282, the court holds the same rule. In the case of Clark vs. Iowa City, the court lays down the same rule as in the former cases, and say: "That the whole purport of the decisions in those cases was to the effect that the coupons being given for the interest on the bond partook of their nature, and were equally high as security, and therefore, the statute could only run against them when it would run against instruments of the dignity of the bonds, (that is, as to the length of time, and not as to when the statute begins to run.")

In other words, the decisions only establish the doctrine that the coupons so far partook of the nature of the bonds, that as the latter were specialties, so were they specialties also, and not mere simple contracts.

This is the sum and substance of the decisions of this court, and ought to have satisfied the plaintiff in error.

If the coupons are negotiable after being detached from the original bond, they would be so before. The mere fact of cutting them from the original bond does not make them negotiable, neither does the actual negotiation of them.

They must contain the elements of negotiability within themselves, hence as to the question in hand, it makes no difference whether the coupons have been detached or not. Their maturity with the right of action thereon, is the test of the application of the statute of limitations.

In the case of Cromwell vs. County of Sac, 4 Otto, 362, Judge Clifford lays down on this point the true rule. He says: "Coupons are written contracts for the payment of a definite sum of money on a given day, and being drawn and executed in a given mode, for the very purpose that they may be separated from the bonds; it is held that they are negotiable, and that a suit may be maintained on them without the necessity of producing the bonds to which they were attached.

Knox County vs. Aspinwall, 21 Howd. 544.
White vs. Railroad, 21 Id., 575.
Aurora vs. West, 7 Wall., 105.
Murry vs. Lardner, 2 Id., 121.

Defendant therefore says that the demurrer should be sustained.

H. T. McNULTY.

O. P. Shiras